

**J.C. Joshi Vs. Municipal Corporation, Shimla**

CMP No. 15163 of 2021 in  
CWP No. 1487 of 1995.

18.05.2022

Present: None for the applicant.

Mr. Naresh K. Gupta, Advocate, for the respondent-Municipal Corporation, Shimla.

Mr. Dilip Kumar Sharma, Advocate, for the intervener.

Mr. Ashish Kohli, Commissioner, Municipal Corporation, Shimla, in person.

This Court, vide order dated 21<sup>st</sup> April, 2022, directed the respondents to give exact dimension/size of the Children's Park, as it was originally existing and take steps to remove the toilets, constructed within the park area. Respondents were also directed to produce affidavit alongwith photographs of the Children's Park and take steps to restore the Children's Park in the shape, in which it was earlier existing.

2. An intervention application has been filed by one Sh. Piyush Vohra, contending that now Municipal Corporation, Shimla is planning to construct public toilets in the basement of the book cafe in Children Park area despite availability of alternative places with the Municipal Corporation. The Corporation is intentionally constructing public toilets in that area, which is within the premises of Children Park. The very purpose of passing of directions passed by this Court will be frustrated if the public toilets are allowed to be constructed in

the basement of book cafe in the Children Park. The photographs of the spot alongwith alternative sites where there is a possibility of construction of public toilets, have been placed on record.

3. This Court has also received a hand-written application sent by post by as many as 51 local residents, wherein it has been stated that despite order passed by this Court on 21.04.2022, directing the respondents that no alteration shall be made in the nature of the Children's Park, the respondents are constructing a book cafe within the park area by demolishing the public toilets, which has occupied a good amount of space of Children Park. A lot of public money is being wasted in the construction of so-called book cafe. The applicants have mentioned that they have requested the concerned Counsellor to stop the work till the matter is completely decided by this Court, but still the respondents are carrying out the construction work. A prayer has been made in the application that the respondents be directed to maintain the Children Park in the public interest only as Children Park and stay all the construction activities within the premises of the Children Park.

4. Mr. N.K. Gupta, learned Counsel appearing for the Municipal Corporation submits that the earlier constructed toilets have been removed/demolished and that the

respondents do not intend to construct any toilet in the park area including beneath the book cafe.

5. Mr. Vikas Rathore, learned Additional Advocate General, on instructions from the Commissioner, Municipal Corporation, Shimla, submits that the respondents shall not carry out any construction work within the area of the Children Park.

6. This Court vide order dated 21.04.2022 directed the respondents to give exact dimension/size of the Children's Park as it was originally existing. The respondents have, so far, not filed any site map showing the dimension/size of the Children Park.

7. Mr. Vikas Rathore, learned Additional Advocate General, on instruction, however, submits that the total measurement of the park was about 179.41 square meters, which also included the area of 16.64 square meters, which was being used for public toilets, but he was unable to give the land area occupied by the book cafe.

8. It is surprising that a very small children park of the size of about 179.41 square meters which was dedicated as a public Children Park, has also been sought to be destroyed in the name of construction of public toilets or book cafe, whereas we have taken a firm view in the order dated 21.04.2022, that once a particular piece of land has been dedicated for use by public as public park or children park, it is

held by the Municipal Body in trust on behalf of public at large and its nature can never be allowed to be changed.

9. We grant further two weeks' time to the respondents to place on record the original site plan/map of the Children Park, with its dimension. The respondents shall also ensure the removal/demolition of the multi storeyed building constructed on the entry/passage of the Children Park in the name of book cafe. The compliance report shall be filed by or before the next date of hearing. The Commissioner, Municipal Corporation, Shimla, shall be responsible for compliance of this order.

10. List on 01.06.2022.

11. Name of Mr. Dalip Kumar Sharma, Advocate, representing the intervener be shown in the cause list, henceforth.

**( Mohammad Rafiq )  
Chief Justice**

**( Sandeep Sharma )  
Judge**

May 18, 2022  
(hemlata)

